

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. [REDACTED] SHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

IN RE:

MELVIN ROY HASSELL and
NELDA JO HASSELL

Debtors

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Case No. 02-37307 HDH-7

MELVIN RAY HASSELL and
NELDA JO HASSELL

Plaintiffs

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v.

UNITED STATES OF AMERICA
(INTERNAL REVENUE SERVICE)

Defendant

Adversary No. 02-3377

UNITED STATES OF AMERICA
(INTERNAL REVENUE SERVICE)

Plaintiff

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v.

MELVIN RAY HASSELL and
NELDA JO HASSELL

Defendants

Adversary No. 03-3239

JOHN C. WILHITE

Plaintiff

v.

MELVIN RAY HASSELL

Defendant

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Adversary No. 03-3244

**MEMORANDUM OPINION ON DEBTORS' REQUEST
TO SET ASIDE DEFAULT JUDGMENT AND PLAINTIFFS'
MOTION FOR ENTRY OF FINAL JUDGMENT**

On November 17, 2003, the Court held a hearing concerning Debtors' request to set aside a judgment entered by the court after Debtors failed to appear and also plaintiffs' motion for entry of final judgment.

Request by the United States for Entry of a Final Judgment

The above-referenced adversary proceedings were consolidated for trial purposes. However, on September 8, 2003, this Court granted the United States' Motion for Partial Summary Judgment on its claims pursuant to 11 U.S.C. § 523(a)(6). The United States dismissed its remaining claims against the Debtors and now seeks the entry of a final judgment. Because all of the United States claims against the Debtors have been decided by this Court or dismissed by the United States, the United States' request for the entry of a final judgment is proper and will be granted.

**Debtors' Request to Set Aside Default Judgment in Favor of
Plaintiff Wilhite and Request by Wilhite for Entry of Final Judgment**

On September 30, 2003, this Court entered a Default Judgment against the Debtor, Melvin R. Hassell, after he failed to appear at the trial docket call. The Default Judgment denied

his discharge under 11 U.S.C. § 727 and found that the claim of Plaintiff Wilhite was not dischargeable pursuant to 11 U.S.C. ¶ 523(a)(6). On October 8, 2003, the Debtors filed a Motion for Rehearing as to Default Judgment Denying Melvin Hassell's Discharge under 11 U.S.C. Section 523(a)(6) and 727 in Consolidated Adversaries (the "Motion for Rehearing"). Plaintiff Wilhite joined with the United States in the request for the entry of a final judgment in these adversary proceedings.

Pursuant to Rule 55(c) of the Federal Rules of Civil Procedure, made applicable herein by Rule 7055 of the Federal Rules of Bankruptcy Procedure, "For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." Although a trial court has discretion in determining whether to set aside a default judgment, the Fifth Circuit has admonished that "'where there are no intervening equities any doubt should, as a general proposition, be resolved in favor of the movant to the end of securing a trial on upon the merits.'" *Lacy v. Sitel Corp.*, 227 F.3d 290, 292 (5th Cir. 2000)(quoting *Gen. Tel. Corp. v. Gen. Tel. Answering Serv.*, 277 F.2d 919, 921 (5th Cir. 1960); see also *United States v. One Parcel of Real Property*, 763 F.2d 181, 183 (5th Cir. 1985)("[M]odern federal procedure favors trials on the merits."). Factors to consider in determining whether cause exists for setting aside a default judgment include "whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented." *Lacy*, 227 F.3d at 292 (quoting *Dierschke v. O'Cheskey (In re Dierschke)*, 975 F.2d 181, 183-84 (5th Cir. 1992). The Court may also consider whether "'the defendant acted expeditiously to correct the default.'" *Id.* (quoting *Dierschke*, 975 F.2d at 184).

In this case, the Debtors are proceeding *pro se*. In both of Mr. Hassell's pleadings and his

testimony at the hearing on the motions, Mr. Hassell asserted that neither he nor his wife were aware of the docket call and certainly would not have disregarded it. Thus, it does not appear that Mr. Hassell willfully failed to appear at the trial docket call. Because Mr. Hassell filed this motion to set aside the default judgment so soon (within 10 days) after the entry of the default judgment, Plaintiff Wilhite will not be prejudiced by the setting aside of the default judgment. And, although it was unclear whether the limited testimony and evidence presented by Mr. Hassell at the hearing indicate that he would have a meritorious defense to Mr. Wilhite's claims, out of an abundance of caution, and considering the Fifth Circuit's admonishment that default judgments are generally disfavored, the Court will set aside the default judgment so that Mr. Hassell may present whatever defenses he may have to Mr. Wilhite's claims during a trial on the merits. Accordingly,

IT IS ORDERED that the Default Judgment entered herein on September 30, 2003, against the Debtor, Melvin R. Hassell, in favor of Plaintiff, John C. Wilhite be, and hereby is, **set aside**;

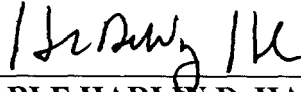
IT IS FURTHER ORDERED that the claims by and between the United States and the Debtors be, and hereby are, **severed** from the claims of John C. Wilhite against the Debtors. Counsel for the United States shall prepare a final judgment on the claims of the United States against the Debtors for which summary judgment has been granted;

IT IS FURTHER ORDERED that counsel for Plaintiff John Wilhite shall obtain a trial setting for trial of this matter on the Court's February trial docket call. Counsel for Plaintiff

Wilhite shall also obtain a setting on Mr. Wilhite's motion for summary judgment some time in early January.

It is so ordered.

Signed this 4th day of December, 2003.

A handwritten signature in black ink, appearing to read "Harlin D. Hale", is written above a horizontal line.

HONORABLE HARLIN D. HALE
UNITED STATES BANKRUPTCY JUDGE